

Fathers, Biological and Anonymous, and Other Legal Strangers: Determination of Parentage and Artificial Insemination by Donor Under Ohio Law

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A modified form of the Uniform Parentage Act (UPA), proposed by the National Conference of Commissioners on Uniform Laws in 1973, was recently enacted by the Ohio Legislature.¹ This act constituted a major departure from prior Ohio law, which conditioned the establishment of full filial rights upon the child's legitimacy.² Legitimacy was generally established by the marriage of the parents or a legitimation action commenced by the father.³ Under the Ohio Modified Uniform Parentage Act (OPA) the family unit consists of a child and its biological parents. Full parental-filial rights and privileges are accorded to all persons who can establish this biological relationship.⁴ Any member of the unit or the representative of a member may bring an action to establish the existence of the biological relationship.⁵

The OPA, as introduced and enacted, does not include the provision of the UPA relative to artificial insemination of a married woman with the sperm of a man other than her husband,⁶ hereinafter referred to as AID. This omission has resulted in considerable consternation because, if applied to AID situations, the general provisions of the OPA result in a determination of parentage that directly conflicts with the intent of the participants. Legislation currently pending would correct the omission of the AID provision.⁷

This Article will analyze the OPA and describe the legal consequences of omitting the AID provision as well as the proposed remedial legislation, House Bill 147. This Article will also discuss the conflicting interests of AID parents and children that must be considered in legislation such as House Bill 147, which regulates AID. Finally, this Article will examine additional legal issues concerning the regulation of other aspects of AID and the use of AID to impregnate surrogate mothers and single women.

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1. Amended Substitute House Bill 245, 114th Ohio Gen. Assembly, Reg. Sess., enacted on March 3, became effective on June 29, 1982.

2. Children born out of wedlock could not inherit from or through their father even if their paternity had been established in a paternity proceeding. *Lewis v. Eutsler*, 4 Ohio St. 355, 360 (1854); *Dirion v. Brewer*, 20 Ohio App. 298, 299, 151 N.E. 818, 818 (1925).

3. A child born during its parents' marriage was presumed legitimate. *Gray v. Richardson*, 474 F.2d 1370, 1372 (6th Cir. 1973). A child born out of wedlock could become legitimate (1) if its father married its mother and acknowledged the child; (2) if the father brought a legitimation action in probate court; or (3) if its father adopted it. OHIO REV. CODE ANN. § 2105.18 (Page 1976 & Supp. 1982); § 3107.15 (Page 1980). For further discussion, see *In re Byrd*, 66 Ohio St. 2d 334, 336-37, 421 N.E.2d 1284, 1286 (1981); *In re Robinette*, 3 Ohio Op. 3d 355 (C.P. Cuyahoga County 1976); Frankart, *The Determination of Parentage Under the New Ohio Parentage Act*, 55 OHIO ST. B.A. REP. 1248, 1248-49 (1982).

4. OHIO REV. CODE ANN. § 3111.01-.02 (Page Supp. 1983).

5. *Id.* § 3111.04.

6. UNIF. PARENTAGE ACT § 5 (1973).

7. H.B. 147, 115th Ohio Gen. Assembly, Reg. Sess. (1983) [hereinafter cited as H.B. 147].

I. THE OHIO MODIFIED UNIFORM PARENTAGE ACT

Ohio's modified version of the UPA is designed to establish the biological parentage of a child. The OPA predicates the rights, privileges, and obligations of the parent-child relationship solely on the biological parental relationship.⁸ The common law and prior statutory law classifications of "legitimate" and "illegitimate" are eliminated, and, with them, the distinctions in the rights of these two groups of children.⁹ The parental-filial relationship of mother and child is generally established by proof that a woman gave birth to the child.¹⁰ The act creates a rebuttable presumption that the parental-filial relationship exists between father and child if there was an attempted or actual marital relationship between the man and the mother, or an acknowledgement of paternity by the man, or a court order ordering the man to pay support for the child.¹¹

A court action for conclusive determination of parentage may be brought by, or on behalf of, any alleged or presumed parent or by, or on behalf of, the child.¹² Upon the timely request of any party to the action, genetic testing may be ordered.¹³ Genetic tests establish the presence or absence of factors known to be genetically transmitted, including blood groups antigens, red blood cell antigens, human lymphocyte antigens, serum enzymes, and serum proteins.¹⁴ If all of the medical experts interpret the tests to exclude an alleged or presumed parent as the biological parent,

8. OHIO REV. CODE ANN. § 3111.01(B) (Page Supp. 1983).

9. See *supra* notes 2-3 and accompanying text; see Wallach & Tenoso, *The Vindication of the Rights of Unmarried Mothers and Their Children: An Analysis of the Institution of Illegitimacy, Equal Protection, and the Uniform Parentage Act*, 23 U. KAN. L. REV. 23, 26 (1974).

10. OHIO REV. CODE ANN. § 3111.02, .17 (Page Supp. 1983).

11. *Id.* Section 3111.03 states in pertinent part:

(A) A man is presumed to be the natural father of a child under any of the following circumstances:

(1) The man and the child's mother are or have been married to each other, and the child is born during the marriage or is born within three hundred days after the marriage is terminated by death, annulment, divorce, or dissolution or after the man and the child's mother separate pursuant to a separation agreement.

(2) The man and the child's mother attempted, before the child's birth, to marry each other by a marriage that was solemnized in apparent compliance with the law of the state in which the marriage took place, the marriage is or could be declared invalid, and either of the following apply:

(a) The marriage can only be declared invalid by a court and the child is born during the marriage or within three hundred days after the termination of the marriage by death, annulment, divorce, or dissolution;

(b) The attempted marriage is invalid without a court order and the child is born within three hundred days after the termination of cohabitation.

(3) The man and the child's mother, after the child's birth, married or attempted to marry each other by a marriage solemnized in apparent compliance with the law of the state in which the marriage took place, and any of the following occur:

(a) The man has acknowledged his paternity of the child in a writing sworn to before a notary public;

(b) The man, with his consent, is named as the child's father on the child's birth certificate;

(c) The man is required to support the child by a written voluntary promise or by a court order.

(4) The man, with his consent, signs the child's birth certificate as an informant as provided in Section

3705.14 of the Revised Code.

Id. § 3111.03.

12. *Id.* § 3111.04.

13. *Id.* § 3111.09(A).

14. *Id.* § 3111.09(E); see also Larson, *Blood Test Exclusion Procedures in Paternity Litigation: The Uniform Acts and Beyond*, 13 J. FAM. L. 713 (1973-1974), discussing the variety of tests available and their use in paternity actions to exclude men as the possible father of an infant.

the court is required to dismiss the action.¹⁵ Expert testimony about the statistical probability of parenthood based upon genetic testing is also admissible.¹⁶

The child is made a party to the parentage action, and if its interests are inconsistent with those of the mother, the court is obligated to appoint separate counsel to represent the child.¹⁷ Under the OPA neither a written agreement purporting to establish paternity nor the marital status of the mother can bar an action to determine parentage.¹⁸ The OPA makes rebuttable the former strong presumption that a child born during an ongoing marriage is the child of the husband.¹⁹ Medical records concerning the child's gestation and birth are admissible in a parentage action irrespective of the mother's doctor-patient privilege.²⁰

If a parentage action is brought on behalf of a child who is or was a recipient of support from a government agency, that agency may intervene for the purposes of collecting or recovering that support.²¹ Furthermore, if the child is the legal ward of a government agency, the agency may commence an action on behalf of the child.²² Thus, the state is provided with an important tool in the exercise of its legitimate police power function of providing support for the minor child.

The OPA specifically acknowledges the nonbiological parent-child relationship between an adoptive parent and child and makes reference to other provisions in the Revised Code concerning adoption.²³ In instances of adoption the biological parents are excused by court decree from the rights, privileges, and obligations of parenthood, and a new parent-child relationship is created between the child and the adoptive parents.²⁴

II. ARTIFICIAL INSEMINATION BY DONOR

In the UPA another class of nonbiological parents is acknowledged. Section five provides for the establishment of a legal parent-child relationship between a man who consents to the artificial insemination of his wife with the semen of another man and the child who results. This procedure, which is commonly referred to as artificial insemination by donor or AID, has become increasingly common in recent years because of increases in male infertility, increased awareness of genetically transmitted diseases and disorders, and the decline in the number of healthy infants available for adoption.²⁵ The model legislation provides that,

15. OHIO REV. CODE ANN. § 3111.09(D) (Page Supp. 1983).

16. *Id.* § 3111.10(C).

17. *Id.* § 3111.07(A).

18. *Id.* § 3111.04(B). Former § 3111.01 granted standing only to unmarried women. Act of Apr. 3, 1873, § 1, 1873 Ohio Laws 111, 111 (codified as amended at OHIO REV. CODE ANN. (Page 1980) (repealed 1982)).

19. OHIO REV. CODE ANN. § 3111.03(B) (Page Supp. 1983); *Gray v. Richardson*, 474 F.2d 1370, 1372 (6th Cir. 1973) (decided under pre-OPA law).

20. OHIO REV. CODE ANN. § 3111.10(E) (Page Supp. 1983).

21. *Id.* § 3111.07(B).

22. *Id.* § 3111.04(A).

23. *Id.* § 3111.02 (referring to the provisions on adoption in Chapter 3107 of the Ohio Revised Code).

24. *Id.* § 3107.15.

25. Artificial insemination by donor was first practiced in the United States in 1884 by Addison Davis Hard. R. SNOWDEN & G. MITCHELL, *THE ARTIFICIAL FAMILY* 13 (1981) [hereinafter cited as SNOWDEN & MITCHELL]. Its use grew, and in 1941 it was estimated that 10,000 children per year were born in the United States as a result of AID.

(a) [i]f, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the [State Department of Health], where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.²⁶

The OPA as introduced and enacted did not contain this language.²⁷ Thus, the current statutory law of Ohio fails to make any specific provision for children conceived by AID. The parentage of these children is subject to determination under the general provisions of the OPA relative to biological parentage. The result of such a determination is clearly in conflict with the intent of the participants in most artificial insemination procedures, that is, that the child be reared as the offspring of the consenting man and his wife, that the donor remain anonymous, and that the donor not assume any of the rights, privileges, or obligations of parenthood.²⁸

Section 3111.04(B) of the OPA provides that agreements between the parties cannot bar a parentage action. As a result, the written consent forms used by many AID practitioners to spell out the putative rights and responsibilities of the participants would not bar a subsequent parentage action possibly resulting in the exclusion of the consenting husband from the family unit.²⁹ In other jurisdictions such forms have been found to estop a consenting husband and wife from later contesting the parentage of a child conceived by AID.³⁰

Verkauf, *Artificial Insemination: Progress, Polemics, and Confusion—An Appraisal of Current Medico-Legal Status*, 3 HOUS. L. REV. 277, 279 (1966).

Current estimates of the number of AID births per year in the United States range from 5000 to 20,000. However, the lack of recordkeeping and the secrecy surrounding the procedure make estimates questionable. Stone, *Complications and Pitfalls of Artificial Insemination*, 23 CLINICAL OBSTETRICS & GYNECOLOGY 667, 667 (1980); Comment, *New Reproductive Technologies: The Legal Problem and a Solution*, 49 TENN. L. REV. 303, 307 n.18 (1982).

Many couples choose AID because of the absence of sperm or low sperm counts. Other couples choose it because the husband has had a vasectomy, often during a previous marriage. The procedure is also used by couples with a known genetically linked risk on the husband's part, such as Down's syndrome, hemophilia, Tay-Sachs, or cystic fibrosis. R. AMELAR, L. DUBIN & P. WALSH, *MALE INFERTILITY* 238 (1977); SNOWDEN & MITCHELL, *supra*, at 16, 115; Beck, *Artificial Insemination and Semen Preservation*, in *INFERTILITY IN THE MALE* 383-84 (1983); Curie-Cohen, Luttrell & Shapiro, *Current Practice of Artificial Insemination by Donor in the United States*, 300 NEW ENG. J. MED. 585, 585 (1979) [hereinafter cited as Curie-Cohen].

The number of infants available for adoption has declined in recent years because of the increased acceptability of single parent families and the use of birth control and abortion. R. AMELAR, L. DUBIN & P. WALSH, *supra*, at 240.

26. UNIF. PARENTAGE ACT § 5 (1979).

27. *First Hearing on H.B. 147 Before the House Civil and Commercial Law Comm.*, 115th Ohio Gen. Assembly (June 28, 1983) (statement of Rep. Marie Tansey).

28. See *supra* note 25.

29. See 15 AM. JUR. LEGAL FORMS 2d, *Physicians and Surgeons* § 202:85 (1973).

30. See, e.g., *People v. Sorensen*, 68 Cal. 2d 280, 288, 437 P.2d 495, 500-01, 66 Cal. Rptr. 7, 12-13 (1968); *Gursky v. Gursky*, 39 Misc. 2d 1083, 1088, 242 N.Y.S.2d 406, 411-12 (Sup. Ct. 1963); *Strnad v. Strnad*, 190 Misc. 786, 787, 78 N.Y.S.2d 390, 392 (Sup. Ct. 1948).

In the past, couples participating in AID also relied on their ability to keep the AID secret. Because of the confidential medical setting and attempts to match the donor's characteristics with those of the husband, they believed no one other than the husband, the wife, and the doctor would ever know that the child conceived by AID was not the husband's child.³¹ Even if someone doubted the paternity, it could not be disproved under prior law, which required proof of no sexual access by the husband to overcome the presumption of spousal paternity.³² However, the development of the genetic testing recognized by the OPA and its growing use in other medical procedures, such as organ transplants, seriously increases the risk that the nonpaternity of the husband can be discovered and proved.

The genetic testing provisions of the OPA provide an easy means for excluding the consenting husband from the legal status of father of the child. Because of the sophistication and cost of such testing, genetic matching of a consenting husband with an AID donor that would be sufficiently close to preclude this result is pragmatically impossible. Because the scope and precision of such tests are becoming increasingly sophisticated, even establishing a perfect match at the time of insemination would not prevent exclusion of the consenting husband as a possible father on the basis of the results of a subsequently discovered test in a future parentage action.³³ The OPA not only makes testing readily available, but also requires that a man excluded by genetic testing be adjudged not to be the father.³⁴

Because in an OPA action the medical records and physician's testimony concerning pregnancy and birth are available to the child and any alleged father, as well as to the mother, the records concerning any AID procedure may not be privileged.³⁵ Thus, it might be possible for mothers of AID children or AID children themselves to obtain the name of the donor-father and take legal action to obtain filial rights.³⁶

Therefore, current Ohio law creates substantial uncertainty for AID donors, AID couples, and AID children. The issue of parentage could be raised in a number of contexts, including child custody and support proceedings, the probate of estates, and efforts on behalf of AID children to establish their biological heritage.³⁷ Because of this confusion and possible parental liability for donors, several AID programs in Ohio have ceased operation.³⁸

III. HOUSE BILL 147

House Bill 147, approved by the Ohio House of Representatives and currently pending before the Ohio Senate Judiciary Committee, is very similar to section five of the UPA. It provides for consenting AID husbands to be treated legally as the

31. Wadlington, *Artificial Insemination: The Dangers of a Poorly Kept Secret*, 64 NW. U.L. REV. 777, 783 (1970); AMERICAN FERTILITY SOC'Y, REPORT OF THE AD HOC COMMITTEE ON ARTIFICIAL INSEMINATION 5-6 (1980), cited in Menning, *Donor Insemination: The Psychosocial Issues*, CONTEMP. OB/GYN, Oct. 1981, at 171.

32. *Gray v. Richardson*, 474 F.2d 1370 (6th Cir. 1973) (decided under pre-OPA law); OHIO REV. CODE ANN. § 3111.03(B) (Page 1980; current version in Page Supp. 1983).

33. Larson, *supra* note 14.

34. OHIO REV. CODE ANN. § 3111.09(D) (Page Supp. 1983).

35. *Id.* § 3111.10(B).

36. Wadlington, *supra* note 31, at 792.

37. *Id.* at 785-93.

38. WBNS-TV News (Oct. 14, 1983—6:00 p.m. edition).

natural father of a child conceived by AID, while excusing the donor from all parental rights and liabilities.³⁹ Upon proof that an AID has taken place with the consent of the husband, an irrebuttable presumption arises that the husband is the father of the child.⁴⁰ House Bill 147 conditions this transfer of parental obligations on medical supervision of the procedure by a licensed physician or surgeon and execution of a written consent signed by both husband and wife.⁴¹ Although the bill provides for certification by the physician of the written consents and their filing with the Department of Health, the failure of certification and/or filing does not affect the validity of the father-child relationship.⁴² The confidentiality of the Department of Health records as nonpublic records is assured: records pertaining to AID, including the records of the supervising physician or surgeon, may not be inspected or copied without court authorization, except by the physician, the husband, the wife, or the keeper of the records.⁴³

It is probable that the provisions of House Bill 147 are also applicable to donations of genetic material to women who cannot otherwise conceive. In the ovum donation process the ovum of a donor is transferred to a donee who is unable to ovulate and conceive so that the donee can bear a child. The ovum may be fertilized either outside the donor's body by the *in vitro* process or before its removal⁴⁴ from the donor by the process of artificial insemination with the sperm of the intended father. The embryo or ovum is then transferred to the donee's uterus.⁴⁵ Both these processes fall with the provisions of House Bill 147 if the donation of the genetic material is made with the consent of the intended parents and under the medical supervision of a licensed physician. The OPA specifically makes its provisions relative to the establishment of paternity applicable to determinations of maternity.⁴⁶ Thus, if a man can become a legal father by joining his spouse in consenting to the donation of genetic material, a woman should be able to become a legal mother in the same way. Furthermore, the current statute recognizes the donee's legal status as mother of the child on the basis that it is she who gives birth to the child.⁴⁷

House Bill 147 is intended to create a means for determining the parentage of AID children born to married women rather than to regulate AID itself.⁴⁸ The bill does not attempt to regulate who may be an AID donor or an AID recipient couple. It conditions the transfer of legal parentage from the donor to the recipient's husband on neither a determination of the best interests of the child nor a determination of parental fitness. However, some AID practitioners have objected to even the limited

39. H.B. 147, *supra* note 7, § 3111.031(A), (E).

40. *Id.* § 3111.03(B).

41. *Id.* § 3111.031(A).

42. *Id.* § 3111.031(B)-(C).

43. *Id.* § 3111.031(C).

44. Lorio, *In Vitro Fertilization and Embryo Transfer: Fertile Areas for Litigation*, 35 Sw. L.J. 973, 975-76 (1982). For a summary of available reproductive paradigms, see Comment, *supra* note 25, at 319-22.

45. Lorio, *supra* note 44, at 976.

46. OHIO REV. CODE ANN. § 3111.17 (Page Supp. 1983). See Comment, *supra* note 25, at 320-21.

47. OHIO REV. CODE ANN. § 3111.02 (Page Supp. 1983).

48. UNIF. PARENTAGE ACT § 5 comment (1979); Kritchevsky, *The Unmarried Woman's Right to Artificial Insemination: A Call for an Expanded Definition of Family*, 4 HARV. WOMEN'S L.J. 1, 19 (1981); Lorio, *supra* note 44, at 991; Comment, *supra* note 25, at 316.

recordkeeping provisions of this kind of legislation as an invasion of the privacy of the AID couple and their physician.⁴⁹ Ironically, groups of adult adoptees, purporting to speak for AID children, have objected to the bill's recordkeeping provision as too confidential and limited and as a violation of the rights of the AID child to know his or her biological heritage.⁵⁰ These objections point to the competing interests of the different participants in the AID procedure.

A. *The Privacy Rights of the AID Couple*

Physicians' objections to House Bill 147 center around the requirement to file with the State Health Department. These AID practitioners argue that the procedure is a highly personal medical matter that should not be subject to government regulation. This right to privacy argument has served as a basis for United States Supreme Court decisions on reproductive freedom.⁵¹ In *Eisenstadt v. Baird*⁵² the Court held that "if the right of privacy means anything, it is the right of the *individual* . . . to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."⁵³ In *Doe v. Bolton*,⁵⁴ another reproductive freedom case, physicians as amici complained that the abortion regulations were an unwarranted intrusion into the physician-patient relationship. Justice Douglas in his concurring opinion agreed: "The right of privacy has no more conspicuous place than in the physician-patient relationship . . ."⁵⁵ Thus, medically supervised AID probably falls within the zone of privacy protected by the federal constitution from governmental regulation unless a compelling state interest in regulation of AID can be shown.⁵⁶ However, while the artificial insemination itself occurs within the confines of the doctor-patient relationship, once the child is born, it must live in the community. The child should be equally as entitled to the protection and aid of the state in obtaining support and care as any other child. The determination of parentage and the provision of support for minors are legitimate state functions in which the state has a compelling interest.⁵⁷ The registration of consenting AID

49. Curie-Cohen, *supra* note 25, at 588 (indicating that 83% of AID practitioners oppose legislation requiring recordkeeping); Rubin, *Year-Old Law Threatens to Bring Insemination into Light of Courtroom*, Columbus Citizen-J., June 28, 1983, at 6, cols. 1-2.

50. Kritchewsky, *supra* note 48, at 23; Lorio, *supra* note 44, at 992; Rombeiro, *Genealogy and Adoption*, 14 OHIO GENEALOGICAL SOCIETY NEWSLETTER 126-27 (1983); *Second Hearing on H.B. 147 Before the House Civil and Commercial Law Comm.*, 115th Ohio Gen. Assembly (Oct. 20, 1983) (statement of Rep. Mark Malone); Comments of Paula Burdett, President of Re-Unite, at A Child of My Heart Adoption Conference, Columbus, Ohio (Sept. 24, 1983).

51. Kritchewsky, *supra* note 48, at 26-31; Lorio, *supra* note 44, at 1006-10; Wingo & Freytag, *Decisions Within the Family: A Clash of Constitutional Rights*, 67 IOWA L. REV. 401, 402-07 (1982); Comment, *Artificial Human Reproduction: Legal Problems Presented by the Test Tube Baby*, 28 EMORY L.J. 1045, 1057-61 (1979) [hereinafter cited as Comment, *Artificial Human Reproduction*]; Comment, *Pregnancy, Privacy, and the Constitution: The Court at the Crossroads*, 25 U. FLA. L. REV. 779 (1973).

52. 405 U.S. 438 (1972).

53. *Id.* at 453.

54. 410 U.S. 179 (1973).

55. *Id.* at 219 (Douglas, J., concurring).

56. Lorio, *supra* note 44, at 1006; Comment, *Artificial Human Reproduction*, *supra* note 51, at 1060; Note, *The Less Restrictive Alternative in Constitutional Adjudication: An Analysis, a Justification, and Some Criteria*, 27 VAND. L. REV. 971, 1029-36 (1974).

57. Poulin, *Illegitimacy and Family Privacy: A Note on Maternal Cooperation in Paternity Suits*, 70 NW. U.L. REV. 910, 920-22 (1976).

couples and their children is a reasonable means of establishing which children's parentage should be subject to determination under the provisions of House Bill 147.⁵⁸ Without such government records one spouse might be unable to prove that the AID had occurred if the other spouse denied it and medical records were unavailable. Further, the bill takes particular care to make registrations of AID conceptions as private as possible. The required consents, as well as all other records and papers pertaining to AID, are subject to inspection by persons other than the couple, the doctor, and the recordkeeper only upon court authorization for good cause shown.⁵⁹ The copies of the written consents on file with the Department of Health are confidential rather than public records.⁶⁰ Although the certification and filing provisions of House Bill 147 are couched in mandatory terms,⁶¹ there are no sanctions for noncompliance: the child's parentage is not affected by the failure to certify or file the consents nor are any specific penalties imposed on physicians who fail to certify.⁶²

B. *The Right of the AID Child to Know Its Father*

The interests of the AID child form the basis of another major objection raised to House Bill 147. The bill grants access to all records involving AID only to the keeper of the records, the doctor, and the AID couple. Others may obtain access only by court order for good cause shown.⁶³ Because the only record required by the statute is a written consent signed by the AID couple,⁶⁴ the provisions limiting access, it has been suggested, deny the AID child information concerning his or her biological heritage. That information might be sought by AID children, as it is by adult adoptees, in order to establish their own personal and psychological identities, to obtain pertinent medical information, or to prevent incestuous marriages.⁶⁵

Proponents of the rights of children—both adopted and AID—to know their biological heritage rely on such constitutional grounds as a first amendment right to freedom of communication, a ninth amendment right to privacy, and the fourteenth amendment right to equal protection under the law.⁶⁶ Despite recent litigation, the existence of such rights remains undecided.⁶⁷ Even if such rights do exist, the state may promulgate reasonable regulations that impinge upon these rights if it has a compelling state interest in doing so.⁶⁸ The participants in AID entered into the

58. See Curie-Cohen, *supra* note 25, at 588, indicating that only 36.9% of physicians keep records of AID births.

59. H.B. 147, *supra* note 7, § 3111.031(D).

60. *Id.* § 3111.031(C).

61. Section 3111.031(B) provides: "The physician or surgeon who supervised the artificial insemination shall certify . . . [and] shall file . . ." (emphasis added). *Id.* § 3111.031(B). Section 3111.031(C) provides: "The Department of Health shall maintain a file . . ." (emphasis added). *Id.* § 3111.031(C).

62. See *id.* § 3111.031(B)-(C).

63. *Id.* § 3111.031(D).

64. *Id.* § 3111.031(B)-(C).

65. Hanley, *A Reasonable Approach to the Adoptee's Sealed Records Dilemma*, 2 OHIO N.U.L. REV. 542, 546 (1975); Wadlington, *supra* note 31, at 805; Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, 48 S. CAL. L. REV. 1196, 1204-10 (1975).

66. Hanley, *supra* note 65, at 546; Wadlington, *supra* note 31, at 805; Note, *supra* note 65, at 1204-10. See generally Annot., 83 A.L.R.3d 800 (1978).

67. See *Alma Soc'y Inc. v. Mellon*, 459 F. Supp. 912 (S.D.N.Y. 1978); *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 372 A.2d 646 (Ch. Div. 1977); Kritchevsky, *supra* note 48, at 32; Note, *Adoption*, 16 J. FAM. L. 615 (1978); Annot., 83 A.L.R.3d 800, 803 (1978).

68. Hanley, *supra* note 65, at 552; Note, *supra* note 67, at 617-20; Note, *supra* note 65, at 1210.

procedure based upon the assurances of the physician that it would remain a private matter and that their identity would be protected. The donor probably would have refused to participate without this assurance.⁶⁹ Currently, only thirty percent of American AID practitioners maintain any records of their donors,⁷⁰ and it is uncertain how many of those records would indicate which donor was the father of a particular AID child. Many physicians view this lack of records as a protective device for the donor's privacy.⁷¹ Thus, there is an expectation of privacy that the state must acknowledge.⁷² The closed records provision of House Bill 147 may be appropriate in order to protect the privacy of the biological parents and the person assuming the care of the child, as are similar provisions in the context of adoption.⁷³

House Bill 147's provision that the records may be inspected upon court authorization for good cause shown may provide some AID children access to the written consents, just as similar provisions have given adopted children access to the court records of their adoptions.⁷⁴ It is less certain that the court would order or that a physician would permit disclosure of information in the physician's files. The bill does not clearly indicate an intention to remove or mitigate any privilege that currently exists concerning these records.⁷⁵ Thus, this issue remains for future resolution.

IV. MATTERS FOR FURTHER LEGISLATIVE ACTION

The enactment of House Bill 147 will clarify the status of AID children, donors, and couples in Ohio, and it will sanction the agreement between the AID participants concerning the parentage of the child. However, other issues remain for further legislative consideration. These include the possible regulation of AID participants and the use of AID to impregnate surrogate mothers and single women.

A. Regulation of AID

House Bill 147 does not attempt to regulate who may offer AID services to the public, who may be an AID donor, or who may be a AID recipient.⁷⁶ Artificial insemination procedures require no elaborate medical equipment nor specialized training. It is possible for a lay person or the woman herself to perform AID.⁷⁷ The state has police power authority to promulgate regulations to protect the health of society.⁷⁸ Restricting the practice of AID does reasonably relate to the state's interest

69. Annas, *Fathers Anonymous: Beyond the Best Interests of the Sperm Donor*, 14 FAM. L.Q. 1, 10 (1980).

70. Curie-Cohen, *supra* note 25, at 588.

71. Annas, *supra* note 69, at 10; Curie-Cohen, *supra* note 25, at 589.

72. Annas, *supra* note 69, at 10; Wadlington, *supra* note 31, at 803.

73. *Alma Soc'y Inc. v. Mellon*, 459 F. Supp. 912, 916 (S.D.N.Y. 1978); *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 311, 372 A.2d 646, 651 (Ch. Div. 1977). Cf. Note, *supra* note 65, at 1214.

74. See 83 A.L.R.3d 800, 808-809 (1978) (citing *In re Ann Carol "S."*, 172 N.Y.L.J. 12 (Aug. 13, 1974)).

75. OHIO REV. CODE ANN. §§ 2317.02 (Page 1981); 4731.22 (Page Supp. 1983). See generally 10 A.L.R.4TH 552 (1981).

76. See, e.g., OR. REV. STAT. § 677.370 (1979); N.Y.C. DEP'T OF HEALTH, HEALTH CODE § 21.01-07 (1973).

77. *C.M. v. C.C.*, 152 N.J. Super. 160, 377 A.2d 821 (Juv. & Dom. Rel. Ct. 1979).

78. *Skinner v. Oklahoma*, 316 U.S. 535, 545 (1942) (Stone, J., concurring); *Buck v. Bell*, 274 U.S. 200, 207 (1927); Kindregan, *State Power over Human Fertility and Individual Liberty*, 23 HASTINGS L.J. 1401, 1411-1414 (1972); Comment, *Artificial Human Reproduction*, *supra* note 51, at 1054-56.

in protecting the AID recipient from the health risks accompanying the procedure and the state's interest in maintaining accurate and confidential records for purposes of determining parentage.⁷⁹ However, specific legislation restricting the practice of AID may be redundant, as the prohibitions against the unlicensed practice of medicine currently in effect in most states may already preclude lay administration of AID for compensation.⁸⁰ It is less certain that laws against unlicensed practice of medicine prohibit self-administered AID or the noncommercial assistance of a woman in performing self-administered AID. However, because AID that is not medically supervised fails legally to terminate the donor's parental status and lacks the protective confidentiality of the medical setting, it is clearly less desirable to participants. Thus, unsupervised AID presents little danger to the community.

Although some jurisdictions have chosen to provide statutory guidelines for donor selection by requiring freedom from genetic and venereal disease,⁸¹ merely confining AID to the medical context will ensure medical supervision of donor selection. There are no universally accepted professional protocols for donor selection,⁸² but studies show that donors tend to be younger, healthier, and more intelligent than the general population, and that the offspring of AID are not at significantly greater risk of genetic defects than the general population.⁸³ Thus, the need for specific governmental regulation of donors to prevent genetically defective children and venereal disease has not been demonstrated.

Currently, couples seeking to utilize medically supervised artificial insemination are subject only to the physician's screening and not any governmental screening.⁸⁴ However, a recent proposal would modify the UPA to require performance of genetic and psychological testing to assure that the procedure is in the best interest of the child, that the test results and the parties' written consents to a court are certified, and that parental fitness is adjudicated prior to the performance of AID.⁸⁵ Such licensure

79. For a discussion of the health risks involved in AID, notably pelvic inflammatory disease, herpes, infertility linked to T mycoplasma, and chlamydia, gonorrhea, and hepatitis, see Stone, *supra* note 25, at 669.

For a discussion of the state's interest in parentage identification, see *supra* note 57 and accompanying text.

80. Ohio law forbids unlicensed persons to practice medicine or surgery. OHIO REV. CODE ANN. § 4731.41 (Page 1977). The practice of medicine, surgery, podiatry, or midwifery is broadly defined to include any person who examines or diagnoses for compensation of any kind, or prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease.

Id. § 4731.34.

A person who uses a syringe to place a donor's semen within the vagina to overcome impairment of infertility in exchange for compensation probably is required to be a licensed professional. Artificial insemination is traditionally viewed as a form of medical therapy. Kritchevsky, *supra* note 48, at 2; Note, *Therapeutic Impregnation: Prognosis of a Lawyer—Diagnosis of a Legislature*, 39 U. CIN. L. REV. 291 (1970).

81. New York City, for example, requires a physical examination of all donors, including screening for venereal disease. N.Y.C. DEP'T OF HEALTH, HEALTH CODE § 21.01-07 (1973). Oregon requires that a physician select the donor and that the donor be screened for venereal disease and genetically transmitted diseases. OR. REV. STAT. § 677.370 (1983).

82. Curie-Cohen, *supra* note 25, at 588; Fraser & Forse, *On Genetic Screening of Donors for Artificial Insemination*, 10 AM. J. MED. GENETICS 399, 401-02 (1981).

83. Curie-Cohen, *supra* note 25, at 588; Fraser & Forse, *supra* note 82, at 400-01; Lorio, *supra* note 44, at 989; Stone, *supra* note 79, at 674.

84. SNOWDEN & MITCHELL, *supra* note 25, at 54-55; Annas, *supra* note 69, at 5-6.

85. Comment, *supra* note 25, at 338-41.

raises serious constitutional concerns. The mere existence of such a screening mechanism would have a chilling effect on the practice of AID. Couples undergoing AID are often very concerned about confidentiality and may in fact choose AID over adoption because of greater privacy.⁸⁶ If governmental licensure of AID is required, couples may be deterred from utilizing the procedure.

The practice of AID is probably within the zone of privacy protected by the Constitution.⁸⁷ Regulation concerning AID can withstand constitutional challenge only if the state has a compelling interest and if the regulation is reasonably related to that interest, that is, neither overbroad nor underinclusive.⁸⁸ The screening of AID recipients to insure parental fitness will be found underinclusive unless it can be demonstrated that children conceived by AID are more likely to be abused or neglected than children conceived by sexual intercourse. No such evidence is available. Further, screening of all prospective AID recipient couples and violating their privacy to prevent abuse by a small percentage of them is overly broad. In regulating fundamental rights, such as the right to bear a child, the state must utilize the least restrictive method possible to protect the compelling state interest.⁸⁹ The state can protect abused and neglected children more selectively without impinging on the rights of nonabusive prospective parents by removing children identified as abused or neglected from their parents' home.⁹⁰

Any governmental regulation that would limit the constitutional rights of the prospective parents for the benefit of an unconceived and unborn child is constitutionally suspect. The state, although empowered as the *parens patriae* to protect minors, is limited in its exercise of this power on behalf of unborn, nonviable humans.⁹¹ Thus, such regulation for the protection of unconceived children is probably unconstitutional.

B. Parentage, Artificial Insemination, and the Surrogate

Recently, surrogate mothering services have been established around the country; they match couples who are infertile due to a female infertility problem with women who agree to be artificially inseminated with the husband's sperm, bear a child, and surrender the child to the man and his wife to be raised by them.⁹² The surrogate generally is compensated for her services.⁹³ The legal ramifications, both civil and criminal, are myriad,⁹⁴ but the determination of the child's legal parentage is the crux of the matter. Under the OPA it is clear that the written agreement

86. SNOWDEN & MITCHELL, *supra* note 25, at 55-56; Kritchevsky, *supra* note 48, at 2 n.5.

87. See *supra* notes 51-56 and accompanying text.

88. See *supra* note 56 and accompanying text.

89. Lorio, *supra* note 44, at 1006; Note, *supra* note 56, at 1029-36.

90. See, e.g., OHIO REV. CODE ANN. § 2151.353 (Page Supp. 1983).

91. *Roe v. Wade*, 410 U.S. 113, 159-64 (1973).

92. See Bloom, *Local Woman to Start Surrogate Parenting Service*, COLUMBUS DISPATCH, Aug. 8, 1982, at 1, col. 2.

93. *Id.* at 1, col. 3.

94. See Eisenman, *Surrogating Mothering—An Option for Infertile Couples?*, COLUMBUS B.A. B. BRIEFS, Jan. 30, 1983, at 4; Keane, *Legal Problems of Surrogate Motherhood*, 1980 S. ILL. U. L.J. 147; Comment, *Contracts to Bear a Child*, 66 CALIF. L. REV. 611 (1978) [hereinafter cited as Comment, *Contracts*]; Comment, *Artificial Insemination and Surrogate Motherhood—A Nursery Full of Unresolved Questions*, 17 WILLAMETTE L.J. 913, 920-24 (1981) [hereinafter cited as Comment, *Artificial Insemination*].

concerning the child's parentage between the biological father and the surrogate is not enforceable.⁹⁵ Proponents of surrogate mothering characterize the child as the legal child of the biological father and characterize the biological father's wife as the child's stepmother.⁹⁶ This characterization allows the biological father to seek custody of the child from the surrogate, if she were to decline to place the child with him. However, in that event, the child could not be removed from her custody by the biological father until a parentage action had established parentage and a custody action had been brought.⁹⁷ The burden of proof is on the contracting father to establish that the mother is an unsuitable custodian or, at the very least, that the father is a more appropriate custodian.⁹⁸ After obtaining placement, the contracting father's custody would still be subject to visitation by the surrogate.⁹⁹ No adoption would be possible without the surrogate's consent, a permanent commitment proceeding, or a finding of abandonment.¹⁰⁰

Even with the consent of the parties, the issue of adoptability of the child must be decided by the probate court on a case by case basis. The court has considerable discretion in the matter of adoption, but the petition must be denied if the placement was made in violation of the law.¹⁰¹ The law prohibits any payments in conjunction with a private adoption other than for foster care, medical expenses, and attorney's fees.¹⁰² Proponents of surrogate mothering have suggested that payments to the surrogate will be permissible under the statutory exception for stepparent adoptions.¹⁰³ The court could require a parentage action and genetic testing under the OPA in order to establish that the proceeding is in fact a stepparent adoption. In the alternative, the court might agree with a recent Attorney General's opinion that the relationship of the contracting father's wife and the surrogate's child is not within the definition of stepparent as envisioned by the legislature in Section 5103.16 of the Revised Code.¹⁰⁴

House Bill 147 would further complicate the transaction by making the child of a married surrogate the legal offspring of her husband and the biological father a legal stranger to the child.¹⁰⁵ Thus, the transfer of physical and legal custody of the child becomes a private placement and adoption. An adoption of this kind requires the voluntary surrender of the child by the surrogate and her husband. If they choose not to surrender the child, the biological father, as a legal stranger, would be without recourse. The child could not be placed with the biological father for adoption

95. OHIO REV. CODE ANN. §§ 3111.04(B) (Page Supp. 1983), 5103.16 (Page 1981).

96. 1983 Ohio Att'y Gen. Op. 2-1.

97. OHIO REV. CODE ANN. ch. 3111, § 2151.23(A)(2) (Page Supp. 1983). A parentage action might be required in order to determine that the child was not the offspring of the surrogate's husband.

98. See, e.g., *In re Byrd*, 66 Ohio St. 2d 334, 421 N.E.2d 1284 (1981); *Pruitt v. Jones*, 62 Ohio St. 2d 237, 405 N.E.2d 276 (1980) (parent must show that awarding him or her the child is in the child's best interest).

99. *In re Byrd*, 66 Ohio St. 2d 334, 339 n.6, 421 N.E.2d 1284, 1287 n.6 (1981).

100. See OHIO REV. CODE ANN. §§ 2151.353, 3107.06-07 (Page Supp. 1983), 5103.15 (Page 1981).

101. *Id.* § 3107.14(D) (Page 1980).

102. *Id.* § 5103.16 (Page 1981).

103. *Id.* § 5103.16(C).

104. 1983 Ohio Att'y Gen. Op. 2-1.

105. H.B. 147, *supra* note 7, § 3111.031(A).

without the prior approval of the court.¹⁰⁶ The payments to the surrogate would clearly be illegal and would bar the approval of such a transaction by the court. Thus, the use of a married surrogate would not be feasible.

Several groups are currently studying the problems posed by the surrogate mother transaction.¹⁰⁷ Although the proponents of surrogate mothering wish to liken it to AID,¹⁰⁸ it is distinctly different in that the surrogate both provides the genetic material for the child and gestates the resulting embryo until an independent human being is born. The transfer of genetic material, which is personal property,¹⁰⁹ can occur in an AID procedure within a doctor's office, and no one beyond that office need ever be aware of it. The existence of a child, an independent human being, and the necessity of transferring its physical custody remove the surrogate transaction from the confines and privacy of the doctor's office,¹¹⁰ with a resultant diminution in the privacy interest to be protected. Further, the existence of an independent human being justifies state intervention in the surrogate transaction no less than it does in third trimester abortions, when a potentially independent human being exists.¹¹¹

The interests of the contracting couple would be best safeguarded by regarding the couple as the legal parents of the child from the time of conception.¹¹² Perhaps some form of preconception approval and quasi adoption proceeding would be appropriate, such as the proposal discussed earlier in connection with AID.¹¹³ This proposal would modify the UPA to provide for licensing of all surrogate mother intermediaries and would require performance of genetic and psychological testing on contract participants, certifications of the tests and the contract to the courts, and a court adjudication of parental fitness and the best interests of the child prior to any attempt at conception. The completion of the quasi adoption, however, could not occur until after birth and placement. If a substantial change in circumstances occurred, the continuing jurisdiction of the court would permit further review of the proposed placement. Thus, if the surrogate changed her mind or if the court discovered previously unknown, unfavorable facts about the contracting couple, the prior approval might be withdrawn.

Prebirth adoptive parent status is somewhat difficult to envision and would be difficult to administer because the child has no independent viable life but is instead completely dependent for its being on the surrogate. Although the surrogate agreement may contain provisions covering prenatal care, nutritional guidelines for the surrogate, and elective abortion, the couple probably could not obtain injunctive relief or specific performance if the surrogate failed to comply with these terms.¹¹⁴

106. OHIO REV. CODE ANN. § 5103.16 (Page 1981).

107. Richard B. Metcalf, Probate Court Judge, Franklin County, Ohio, has convened an interdisciplinary group to study these issues. Likewise, the Ohio State University Commission on Inter-Professional Education and Practice is considering them.

108. Keane, *supra* note 94, at 155-56.

109. See Comment, *supra* note 25, at 323-28.

110. See Comment, *Parenthood by Proxy: Legal Implications of Surrogate Birth*, 67 IOWA L. REV. 385, 394 (1982).

111. *Roe v. Wade*, 410 U.S. 113, 161 (1973).

112. Comment, *supra* note 25, at 341-42.

113. See *supra* note 85 and accompanying text.

114. Eisenman, *supra* note 94, at 5; Comment, *Contracts*, *supra* note 94, at 620.

The contracting couple would be in a situation similar to that of the father of an unborn child, that is, without legal recourse to protect the child from its gestational mother.¹¹⁵

In the alternative, the state might choose specifically to outlaw commercial surrogate transactions and refuse to allow the adoption mechanism to be utilized to clarify the parentage of a commercial surrogate's children.¹¹⁶ Specific revision of "anti-baby-selling" statutes to include commercial surrogate transactions would be sufficient in this regard.

C. AID and the Single Woman

This Article has discussed the use of AID procedures by married couples as a means of overcoming a fertility problem. However, AID is also being utilized by single women who desire to become the sole legal parent of a child.¹¹⁷ House Bill 147 makes no provision for determining the legal parentage of an AID child born to a single woman.¹¹⁸ It has been suggested that no specific provision is necessary because in medically supervised inseminations the donor's anonymity protects him from liability and prevents him from asserting parental rights. As a result, there is no social father wishing to establish legal parentage.¹¹⁹ Thus, single women utilizing AID are already de facto single parents even in the absence of specific legislation. This analysis presumes that the medical procedures and records either prevent the identification of the donor or that they are protected by physician-patient privilege. Medical records concerning AID donors generally are not kept, and when they are maintained, they often do not indicate which donor is responsible for a particular conception.¹²⁰ The status of physician-patient privilege is less certain. The OPA provides that medical records concerning gestation and birth are admissible in parentage actions without regard to the privilege.¹²¹

If the identity of the donor does become known or if the donor becomes aware of the child's identity, a legal parent-child relationship could be established by either the donor or the child.¹²² The only reported case dealing with a single AID mother allowed the biological father the parental rights he sought, in spite of the mother's objections, on the premise that having two parents whenever possible is in a child's best interest.¹²³ Under the general provisions of the OPA, as under the previous law,

115. See generally Comment, *Abortion and the Husband's Consent*, 13 J. FAM. L. 311 (1973-1974); Note, *Abortion: The Father's Rights*, 42 U. CIN. L. REV. 441 (1973).

116. 1983 Ohio Att'y Gen. Op. 2-1.

117. Annas, *supra* note 69, at 5; Curie-Cohen, *supra* note 25, at 585; Kritchevsky, *supra* note 48, at 3 n.10; Note, *The Fourteenth Amendment's Protection of a Woman's Right to Be a Single Parent Through Artificial Insemination by Donor*, 7 WOMEN'S RTS. L. REP. 251, 252 n.5 (1982).

118. House Bill 147 applies only to married women, their husbands, and donors to married women. H.B. 147, *supra* note 7, § 3111.031(A).

119. Note, *supra* note 117.

120. See *supra* note 71 and accompanying text.

121. See *supra* notes 74-75 and accompanying text.

122. C.M. v. C.C., 152 N.J. Super. 160, 377 A.2d 821 (Juv. & Dom. Rel. Ct. 1977); OHIO REV. CODE ANN. § 3111.04 (Page Supp. 1983); Kritchevsky, *supra* note 48, at 15-16 & n.71.

123. C.M. v. C.C., 152 N.J. Super. 160, 377 A.2d 821, 824 (Juv. & Dom. Rel. Ct. 1977).

if a single woman becomes pregnant, whether the pregnancy is the result of AID or intercourse, the biological father has parental rights and responsibilities.¹²⁴ Because of possible legal liability for the donor and because of prejudices against single motherhood, single women have often had difficulty obtaining AID services.¹²⁵

Five states have provisions dealing with the artificial insemination of single women.¹²⁶ In four of these states the legislatures have dealt with the issue by excusing donors in medically supervised artificial insemination procedures from parental liability, regardless of the marital status of the recipient.¹²⁷ Such provisions would remove some of the current confusion concerning the legality of artificial insemination for single women and would be consistent with the Supreme Court's contraception and abortion cases, which have stressed the individual's right to reproductive freedom.¹²⁸

Some jurisdictions may be unwilling tacitly to sanction the creation of one parent families by AID. It is often stated that single parent families are at greater financial and emotional risk and that two parent family units are the preferred family unit for child rearing.¹²⁹ The UPA affirms this preference by affirming the right of all children to a legal relationship with, and support from, both parents, regardless of the parent's marital status or wishes.¹³⁰ Similar emphasis on the child's right to a parental relationship with both parents is seen in divorce cases in which the court has refused to allow the parents *inter sese* to limit or sever the support obligations or visitation rights of one parent to the detriment of the child.¹³¹ In some other cases courts have denied single parent adoptions.¹³²

V. CONCLUSION

The enactment of House Bill 147 would clarify the status of AID families and donors in Ohio. It would change the legal paternity of a child born as a result of a medically supervised AID procedure from the biological father to the consenting husband based upon the written consents of the participants. This sanction would constitute a major departure from the general provisions of the OPA, which refuses to honor private agreements and which bases all final determinations of paternity on a

124. OHIO REV. CODE ANN. § 3111.02 (Page Supp. 1983).

125. Curie-Cohen, *supra* note 25, at 585; Kritchevsky, *supra* note 48, at 16; Note, *supra* note 117.

126. Kritchevsky, *supra* note 48, at 18 (the four states whose statutes are cited *infra* note 127 plus Oregon, OR. REV. STAT. § 677.355-370 (1983)).

127. See CAL. CIV. CODE ANN. § 7005(b) (West 1983); COLO. REV. STAT. § 19-6-106(2) (1978); WASH. REV. CODE ANN. § 26.26.050(2) (Supp. 1983-1984); WYO. STAT. § 14-2-103(b) (1978).

128. Kritchevsky, *supra* note 48, at 26-40; Note, *supra* note 117, at 260-62. See *supra* text accompanying notes 51-55.

129. Poulin, *supra* note 57, at 919-20.

130. Cf. OHIO REV. CODE ANN. § 3111.02 (Page Supp. 1983) (parent-child relationship may be established with natural mother, natural father, or adoptive parent); see also Wallach & Tenoso, *supra* note 9.

131. E.g., Dep't of Mental Health & Mental Retardation v. Wiedemann, 1 Ohio App. 3d 27, 437 N.E.2d 1212 (1980); Miller v. Miller, 7 Ohio App. 2d 22, 218 N.E.2d 630 (1966); Campbell v. Campbell, 46 Ohio App. 197, 188 N.E. 300 (1933); Annot., 57 A.L.R.2d 1139 (1958).

132. E.g., Adoption of Infant H., 69 Misc. 2d 304, 330 N.Y.S.2d 235 (Fam. Ct. 1975); Van Kleek v. State Pub. Welfare Comm'n (In re Adoption of Schultz), 252 Or. 497, 450 P.2d 549 (1969); Annot., 2 A.L.R.4th 555 (1980); contra In re Adoption of Corey, 182 N.E.2d 75 (Ohio P. Ct. 1959). See OHIO REV. CODE ANN. § 3107.03 (Page 1980).

court order. Furthermore, unlike the provisions of the OPA relative to biological paternity and adoption, the proposed legislation does not accord the AID child independent representation, either through a court appointed next friend or an attorney, in the determination of legal parentage.

This departure in philosophy must not be read as a sanction of all attempts to change the legal parentage of a child born as a result of medically assisted conception or gestation. The provisions of House Bill 147 are based upon the privacy interests that are inherent in the physician-patient and the marital relationships. Although the General Assembly may at some future time choose to extend such sanction to agreements involving surrogate mothering and artificial insemination of single women, House Bill 147 does not do so. In such future considerations on these matters the General Assembly may find a sufficiently compelling interest in the AID child's welfare to justify state review or licensing of these procedures in order to shift legal parentage.